

For the reasons expressed below, the Preliminary Hearing Order should be affirmed. The issues whether the claimant was a common law employee or statutory employee of the respondent may be reviewed by the Appeals Board under the provisions of the preliminary hearing statute, K.S.A. 44-534a. However, the Preliminary Hearing finding of the Administrative Law Judge as to the rate of temporary total disability benefits is not subject to the review of the Appeals Board at this juncture of the proceeding because it neither pertains to one of the jurisdictional issues enumerated in K.S.A. 44-534a(a)(2), nor did the Administrative Law Judge exceed his authority by deciding the issue, which would permit review pursuant to K.S.A. 44-551, as amended. As previously stated in a number of our earlier decisions, before the Appeals Board may review a preliminary hearing finding, it must either pertain to one of the jurisdictional issues listed in K.S.A. 44-

534a(a)(2), or an Administrative Law Judge must have exceeded their jurisdiction and authority.

The Appeals Board finds the claimant was an employee of the respondent, Crescent Oil, when he fell and injured himself while painting. The Appeals Board finds Crescent Oil owned the property claimant was painting, furnished the paint and supplies used in the project and retained the rights to control claimant's activities and pull him from the job. The term workman, employee or worker means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. See K.S.A. 44-508(b).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated January 12, 1995, should be affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert E. Barker, Chanute, KS
Garry W. Lassman, Pittsburg, KS
Floyd Etheridge (Pro Se), Chanute, KS
John D. Clark, Administrative Law Judge
George Gomez, Director